

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

AMEND TITLE 13, CALIFORNIA CODE OF REGULATIONS
DIVISION 2, CHAPTER 6, ARTICLE 3, SECTIONS 1160.3 AND 1160.4
AND ADOPT ARTICLE 3, NEW SECTION 1160.5

HAZARDOUS MATERIALS GENERAL HAZARDOUS MATERIALS REGULATIONS (CHP-R-08-02)

California Vehicle Code (VC) Section 2402 authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Section 2402.7 VC specifically requires the Commissioner to adopt definitions designated by the United States Department of Transportation relating to hazardous materials, substances, or wastes. Sections 32000.5, 32002, 34501, and 34501.5 VC allow the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 VC, including but not limited to those transporting hazardous materials (HM). The adopted regulations are contained in Title 13, California Code of Regulations (13 CCR).

Pursuant to Division 14.1 (commencing with Section 32000) of the VC, the CHP is authorized to inspect and license the motor carriers with special attention directed to the negligent operators or repeat violators. Additionally, the CHP provides additional protection through the licensing of motor carriers transporting HM. This rulemaking adopts changes which clarify HM licensing requirements; prohibits the Department from licensing a motor carrier for transportation of HM unless the motor carrier has submitted the required fees and a fully and accurately completed application for participation in the Biennial Inspection of Terminals (BIT) program pursuant to Section 34501.12 VC; contains non-substantive changes to regulatory language in order to lend further clarity to existing rules; and is promulgated pursuant to mandates as a result of Assembly Bill 1612, Chapter 415, statutes of 2007, and changes to Section 32000.5, VC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The CHP proposes to amend Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Sections 1160.3 and 1160.4, and adopt new Section 1160.5, pursuant to Sections 32000.5 and 34501 VC. The CHP proposes to specifically address the hazardous materials (HM) licensing and application process. The CHP is charged with regulation and licensing of motor carriers transporting HM who operate on California highways. Every motor carrier who directs the transportation of an explosive and any motor carrier who directs the transportation of HM, who is required to display placards, and every motor carrier who transports for a fee in excess of

500 pounds of HM of the type requiring placards, shall be licensed. The purpose for licensing HM transporting carriers is to establish a system of electronic or hard-copy records in order to properly and correctly identify and track those carriers. The purpose for identifying and tracking the carriers is to implement the mandates contained in Sections 2402.7, 34501, and 32000.5 VC.

The adoption of these regulations is necessary to ensure the CHP maintains true and accurate records, to outline and clarify different types of HM transportation licenses issued by the Department, to ensure the safe operation of vehicles and transportation of HM by carriers, and to provide the Department enhanced capacity to ensure compliance with applicable requirements.

Additionally, changes to Section 32000.5 VC, as a result of Assembly Bill 1612, Chapter 415, statutes of 2007, prohibit the CHP from issuing a license to transport HM to any motor carrier unless each terminal from which HM carrying vehicles are operated is in compliance with the requirements of Section 34501.12 (Biennial Inspection of Terminals – BIT) and is currently rated satisfactory. Adoption of these regulations is necessary to provide clarification of the applicability of these requirements and to implement the legislative intent.

PUBLIC COMMENTS

Any interested person may submit written comments on these proposed actions via facsimile to (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

California Highway Patrol
Commercial Vehicle Section
ATTN: Mr. Cullen Sisskind
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments must be received no later than 4:45 p.m., November 3, 2008.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 446-4579 or by calling the CHP, CVS, at (916) 445-1865. Facsimile requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the information is

incomplete or illegible.

The rulemaking file is available for inspection at the CHP, CVS, 444 North Third Street, Sacramento. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our website at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our website.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations should be directed to Mr. Cullen Sisskind, or Mr. Greg Bragg, CHP, CVS, at (916) 445-1865. Inquiries regarding the substance of the proposed regulations should also be directed to Mr. Sisskind or Mr. Bragg.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary or reimbursable costs or savings to any local agency, school district, or state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The CHP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, the regulated community is encouraged to respond during the public comment period of this regulatory process if significant impacts are identified.

EFFECT ON SMALL BUSINESSES

The CHP has not identified any significant impact on small business. This does not represent an additional mandate on motor carriers, but simply provides a clarification of HM licensing requirements. This is not to say a motor carrier who chooses to operate under the provisions of this regulatory process will not incur certain administrative costs; the fact is a motor carrier who elects to use these provisions, would voluntarily subject themselves to the administrative costs associated with certain document preparation and BIT program compliance required by this rulemaking. However, a carrier currently transporting HM in compliance with all applicable statutes and regulations, including but not limited to licensing and BIT program requirements, will be completely unaffected by this proposal. Should the motor carrier industry identify any costs not identified by this rulemaking, the CHP encourages input on this matter through the comment process.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Vehicle Code Sections 2402.7, 32000.5, and 34501.

REFERENCE

This action implements, interprets, or makes specific Vehicle Code Section 32000.5.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
D. A. Vertar, Chief
Enforcement Services Division